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SENATE BILL NO. 1243

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 6, 2023)

(Patron Prior to Substitute—Senator Surovell)

A *BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-87.1, relating to reproductive health care services; prohibitions on extradition for certain crimes; prohibited practices under Virginia Consumer Protection Act.*

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-87.1 as follows:

§ 19.2-87.1. Extradition of persons charged with certain criminal violations; prohibition.

A. As used in this section, "reproductive health care services" means medical, pharmaceutical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy, contraception, or abortion.

B. Notwithstanding the provisions of this article, no demand for extradition of a person charged with a criminal violation of law of another state shall be recognized by the Governor if such alleged criminal violation involves the provision or receipt of or assistance with reproductive health care services unless the alleged criminal violation would also constitute a criminal offense under the laws of the Commonwealth; however, the Governor may request that the state demanding extradition attest to the factual and legal basis of such alleged violation of the law of another state.

C. The provisions of this section shall not apply when the person who is subject to such demand for extradition by another state was physically present in the demanding state at the time of the commission of the alleged offense and thereafter fled from such state, except that an affirmation under oath by such person that he was present in the Commonwealth at the time of the commission of the offense shall create a presumption that he was not present in the demanding state at the time of the commission of such alleged offense. Such presumption may be rebutted by clear and convincing evidence by the demanding state in the circuit court of the jurisdiction where such person subject to such demand is a resident or is being held pending extradition.

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfections, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfections or "not first class";

8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice

60 or bill for merchandise or services previously ordered;

61 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
62 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
63 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
64 manufacturing the goods or services advertised or offered for sale;

65 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
66 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
67 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,
68 or under federal statutes or regulations;

69 13a. Failing to provide to a consumer, or failing to use or include in any written document or
70 material provided to or executed by a consumer, in connection with a consumer transaction any
71 statement, disclosure, notice, or other information however characterized when the supplier is required
72 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
73 information in connection with the consumer transaction;

74 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
75 with a consumer transaction;

76 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
77 3.2-6516, or 3.2-6519 is a violation of this chapter;

78 16. Failing to disclose all conditions, charges, or fees relating to:

79 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
80 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
81 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
82 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
83 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
84 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
85 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
86 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
87 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
88 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
89 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
90 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
91 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
92 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
93 § 46.2-100;

94 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
95 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
96 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
97 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
98 the agreement;

99 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
100 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
101 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
102 receiving overpayments. If the credit balance information is incorporated into statements of account
103 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

104 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
105 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
106 agreement;

107 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

108 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
109 seq.);

110 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
111 seq.);

112 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
113 (§ 59.1-207.17 et seq.);

114 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

115 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
116 (§ 59.1-424 et seq.);

117 24. Violating any provision of § 54.1-1505;

118 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
119 17.6 (§ 59.1-207.34 et seq.);

120 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

121 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

- 122 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 123 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
- 124 seq.);
- 125 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
- 126 seq.);
- 127 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 128 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 129 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 130 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 131 35. Using the consumer's social security number as the consumer's account number with the supplier,
- 132 if the consumer has requested in writing that the supplier use an alternate number not associated with
- 133 the consumer's social security number;
- 134 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 135 37. Violating any provision of § 8.01-40.2;
- 136 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 137 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 138 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 139 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
- 140 (§ 59.1-525 et seq.);
- 141 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 142 43. Violating any provision of § 59.1-443.2;
- 143 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 144 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 145 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 146 47. Violating any provision of § 18.2-239;
- 147 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 148 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
- 149 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 150 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
- 151 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
- 152 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
- 153 children's products that are used, secondhand or "seconds";
- 154 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 155 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 156 52. Violating any provision of § 8.2-317.1;
- 157 53. Violating subsection A of § 9.1-149.1;
- 158 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
- 159 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
- 160 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
- 161 which defective drywall has been permanently installed or affixed;
- 162 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
- 163 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
- 164 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
- 165 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
- 166 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 167 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 168 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 169 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 170 59. Violating any provision of subsection E of § 32.1-126;
- 171 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
- 172 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
- 173 61. Violating any provision of § 2.2-2001.5;
- 174 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
- 175 63. Violating any provision of § 6.2-312;
- 176 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
- 177 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
- 178 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
- 179 67. Knowingly violating any provision of § 8.01-27.5;
- 180 68. Failing to make available a conspicuous online option to cancel a recurring purchase of a good
- 181 or service as required by § 59.1-207.46;
- 182 69. Selling or offering for sale to a person younger than 21 years of age any substance intended for

human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;

70. Selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such substance that constitutes a single serving, and (d) the total percentage and milligrams of tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the substance originates. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;

71. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit; ~~and~~

72. Selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark as defined in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor of a product intended for human consumption other than the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or distribute such substance; *and*

73. *Obtaining, disclosing, selling, or disseminating any personal reproductive or sexual health information without the consent of the consumer, as defined in § 59.1-575. Such personal reproductive or sexual health information shall include information relating to the past, present, or future reproductive or sexual health of an individual, including:*

a. Efforts to research or obtain reproductive or sexual information services or supplies, including location information that may indicate an attempt to acquire or receive such services or supplies;

b. Reproductive or sexual health conditions, status, diseases, or diagnoses, including pregnancy, menstruation, ovulation, ability to conceive a pregnancy, whether an individual is sexually active, and whether such individual is engaging in unprotected sex;

c. Reproductive and sexual health-related surgeries or procedures, including termination of a pregnancy;

d. Use or purchase of contraceptives, birth control, or other medication related to reproductive health, including abortifacients;

e. Bodily functions, vital signs, measurements, or symptoms related to menstruation or pregnancy, including basal temperature, cramps, bodily discharge, or hormone levels;

f. Any information about diagnoses or diagnostic testing, treatment, medications, or the use of any product or service relating to the matters described in subdivisions a through e; and

g. Any information described in subdivisions a through f that is derived or extrapolated from nonhealth-related information such as proxy, derivative, inferred, emergent, or algorithmic data.

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.